STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 8883
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for Emergency Assistance/General Assistance (EA/GA) benefits. The issue is whether the petitioner was evicted from his last permanent housing for reasons beyond his control, and, thus, whether he is facing a "catastrophic situation" as defined by the pertinent regulations.

The matter was heard on an "expedited" basis (see Procedures Manual ə P2610D) on November 16, 1988. Following the "hearing" (see infra) and pending the board's review of this recommendation, the hearing officer orally reversed the department's decision.

FINDINGS OF FACT

The petitioner lives with his wife and their two young children. Prior to October 31, 1988, the family lived in a trailer provided as housing incidental to and contingent upon the petitioner's employment as a farm laborer. The petitioner had worked on this particular farm for about eight months.

On or about October 25, 1988, the petitioner was buying groceries at a local store where he had established credit.

While there, he was informed by the storekeeper that his credit had been rescinded because the petitioner's employer had told the storekeeper that the petitioner was about to lose his job. The storekeeper later stated that the petitioner's employer had complained to her about the petitioner's job performance, but that he had not said, in so many words, that he was firing the petitioner. It appears that the storekeeper, based on her understanding of the employer's comments, had taken it upon herself to terminate the petitioner's credit. However, at least on the day in question (October 28, 1988), the petitioner had clearly been led to believe that he was about to be fired.

The next day, October 29, 1988, was the petitioner's day off from work. He and his family drove to another part of the state that day to visit with relatives and to inquire about farm jobs in that area. The petitioner was due back at his job early in the morning on October 30, 1988.

The petitioner returned home from visiting his relatives late in the morning of October 30th. He went to the farm, but his employer was not there. He told another farmhand to tell the employer that he would be at his home if the employer wanted to see him. The petitioner did not work on that day.

On the morning of October 31, 1988, the employer went to the petitioner's trailer. The employer alleged to the department that he said to the petitioner: "I assume you quit." The employer further alleged that the petitioner

replied: "Yup, I figured you were going to fire me so I quit." With this, the employer alleged he told the petitioner to clear out of the trailer by the end of the week. The employer alleged he had not, in fact, fired the petitioner and that the petitioner, if he had asked, could have continued working. However, there is no allegation or indication that the employer initiated any conversation with the petitioner attempting to clear up any "misunderstanding" the petitioner may have had over his job status. The petitioner alleges that he was still under clear impression that he had been fired--or, at least, that he was about to be.

After the family vacated the trailer they applied for ANFC and EA/GA from the department. The department denied EA/GA on the grounds that the petitioner had control over his eviction by voluntarily quitting the job upon which his housing depended. After being denied this assistance the family found temporary housing in a local shelter for the homeless. They continue to seek EA/GA to secure permanent housing.

Rather than ruling on a myriad of preliminary procedural and evidentiary matters raised by the form and content of the department's evidence (e.g., the employer was not present to testify), the hearing officer took only an "offer of proof" from the department as to the factual basis of its decision. The allegations of the employer, recited above, consist of the department's representations as to

what the employer's testimony would have been had he testified. Having considered no other disputed evidence, but assuming as true all the evidence offered by the department, the hearing officer finds that the petitioner is guilty of, at most, a serious error in judgement. It cannot be found, however, that the petitioner intentionally, or with culpable negligence, unilaterally violated a contractual agreement with his employer that led to his loss of housing.

ORDER

The department's decision is reversed.

REASONS

The petitioner is eligible for GA benefits only if his situation falls within the criteria under the regulations defining "catastrophic situations". Those regulations, W.A.M. ə 2602, include the following provisions:

> Catastrophic Situations
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> Any applicant who has exhausted all available income and resources and who has an emergency need caused by one of the following catastrophic situations may have that need which is indeed caused by the catastrophe met within General Assistance standards disregarding other eligibility criteria. Subsequent applications must be evaluated in relation to the individual applicant's potential for having resolved the need within the time which has elapsed since the catastrophe to determine whether the need is now caused by the catastrophe or is the result of failure on the part of the applicant to explore potential resolution of the problem:
>
> . . .
>
> b. A court ordered or constructive eviction due to circumstances over which the applicant had no control. An eviction resulting from intentional,

> serious property damage caused by the applicant; repeated instances of raucous or illegal behavior which seriously infringed on the rights of other tenants of the landlord or the landlord himself; or intentional and serious violation of a tenant agreement is not considered a catastrophic situation. Violation of a tenant agreement shall not include nonpayment of rent unless the tenant had sufficient financial ability to pay and the tenant did not use the income to cover other basic necessities or did not withhold the rent pursuant to effort to correct substandard housing.

To constitute circumstances over which a tenant had "control" over his eviction the above regulation clearly requires a finding that the tenant has acted with intent or with culpable negligence in causing his eviction. See Fair Hearings No. 7728 and 8797. Moreover, the board is not bound to defer to factual assumptions or value judgements made by the department in determining whether an eviction was, in fact, for reasons "beyond the individual's control." Id. In this case, it cannot be found that the facts alleged by the department establish that the petitioner acted with the requisite intent or culpability. Although the petitioner may have shown questionable judgement in not pressing his employer to clarify his employment situation, it cannot be concluded that he unilaterally terminated the employment upon which his tenancy was based. Therefore, it cannot be concluded that he "intentionally" breached a condition of his tenancy. The department's decision is, therefore, reversed.

# # #

As a more basic matter, however, the hearing officer also concludes that the department's policy of denying assistance to homeless children based on the acts or omissions of their parents violates the remedial purposes of the G.A. statutes and the E.A. regulations. The board has repeatedly noted that the G.A. program is entirely state funded and administered. The E.A. program, though mostly federally funded, is also state administered. Therefore, deference must be accorded to the department in its interpretation of the statutory and regulatory provisions of these programs. The board has held, however, that deference in the context of a de novo appeal hearing does not extend to the department's interpretation of facts or to the value judgements that may underlie the department's interpretation of the facts of any particular E.A. or G.A. case. Fair Hearings No. 7728, 8794, and 8797. Deference to department regulation or policy is also not required when that regulation or policy is contrary to law. 3 V.S.A. ə 3091(d).

Turning first to the G.A. program, the department's regulations define an "applicant" as ". . . the individual who is applying for general assistance for his own needs and for the needs of those dependents with whom he lives and for whom he is legally responsible." W.A.M. ə 2601. Both the statute and the regulations set forth provisions precluding eligibility for "any individual whose income within the last 30 days exceeds department standards." 33 V.S.A. ə

3004(a)(1) and W.A.M. ə 2600(C)(1). G.A., like virtually all welfare programs, imputes the income of parents to their children.

It does not follow from the above, however, that all circumstances, actions, or omissions of parents must be imputed to children in determining whether those children are eligible for general assistance in their own right. The income provisions, cited above, specifically do not apply to "applicants" who face a "catastrophic situation." 33 V.S.A. ə 3004(a) and W.A.M. ə 2600C. The hearing officer finds nothing in the statute or the regulations stating that an "applicant" for G.A. cannot be a child who lives with one or both of his parents.

The G.A. statutes include the following provisions:

> Consistent with available appropriations the department . . . shall furnish general assistance to any otherwise eligible individual.

33 V.S.A. ə 3004(a); and:

> A person may apply for general assistance to the nearest available . . . district welfare director in the manner required by the commissioner.

33 V.S.A. ə 3005(a). Emphasis added.

In most, if not all, G.A. cases involving families with children, both the parents and the children are facing the same "catastrophe". In this case, it is the lack of suitable temporary housing. In determining G.A. eligibility it is one thing to deem the income of parents as being available to their children. It is quite another matter,

however, to deem parental conduct to their children. The regulations provide that an "applicant" may be eligible for G.A. to relieve the emergency caused by the lack of housing if the eviction was "beyond (his or her) control". W.A.M. ə 2602(b), supra. There is no question in this matter that the lack of housing facing the petitioner's children was beyond their control. Yet, the department applies ə 2601 and ə 2602(b) (supra) as automatically "visiting the sins of the parents upon their children" when it determines that none of the family members are eligible for G.A. The hearing officer concludes that this punitive result is not sanctioned by the underlying G.A. statutes.

It can be noted at the outset that this is not a case in which an arguably harsh result must be upheld because it implements a clear expression of legislative intent. See, e.g., Bowen v. Gilliard, 107 S.Ct. 3008 (1987) (the "sibling deeming" case). The Vermont G.A. statues became effective in 1967. The so-called "catastrophic situation" provisions have not been substantially amended since that time. It is doubtful that either the legislature or the department had the remotest contemplation 20 years ago of a homelessness crisis like the one that now exists in the Burlington area. The most the department can argue in these matters is that the legislature, in 1967, gave to the department the general authority to implement provisions of G.A. eligibility that the department deems necessary "consistent with appropriate

funding". See 33 V.S.A. ə 3004(a).

Given the above provision, however, the department can reflexively attempt to defend virtually any G.A. policy as being reasonable and necessary because of budgetary constraints. In this case, however, such a claim is simply not credible.

The Commissioner of the Department of Social Welfare recently acknowledged that "the number of homeless people in Vermont is growing," and the "the Burlington area is clearly experiencing a greater problem than any other area of the state." The above comments are published in a report entitled Homelessness in Vermont, A Research Survey, published by DSW in October, 1987 (See pp 1 and 60). In the report, the commissioner prefaces specific recommendations by stating:

> Of course, the first priority is to see that the current homeless population is fed and housed. Id. p viii.

As a "solution" to the problem, the commissioner goes on to state:

> The immediate objective is to insure that the homeless population is provided with a place to stay and food to eat. Id. p 6.

In light of the above, it seems audacious, if not incongruous, for the department to argue that it has a statutory mandate to deny G.A. coverage to a "population" that the department, itself, has concluded faces the most brutal of need. Moreover, however, it simply strains credulity for the department to maintain that it cannot find

the means to address this "first priority" of need. It may well be (though the hearing officer would seriously doubt this) that the department's only alternative would be to cut funds currently available for other, less urgent, areas of G.A. need.[3] Unfortunately, however, judging from the department's legal position in these matters, the problem appears to more a lack of commitment and resolve on the part of the department rather than inadequate funding.

The commissioner's report (supra) undercuts the arguments the department routinely makes before the board in these cases in another important respect. The report specifically notes that a primary "cause" of homelessness perceived by several shelters in the state (including one in Burlington) is "emotional and behavioral problems." Id. p 13. Yet nowhere in her report (of over 70 pages) does the commissioner mention or intimate what the department cavalierly argues before the board--that, at least as far as G.A. eligibility is concerned, the past behavior of homeless people should make them responsible for their present plight. Indeed, the very "emotional and behavior problems" the department cites in its report as one of the primary causes of homelessness for individuals and families are the actual bases in the department's regulations used to disqualify many of these people from the emergency G.A. necessary to relieve the severity of their situation. The hearing officer submits that the board owes little, if any, "deference" to such muddled and contradictory expressions of

department "policy". The hearing officer suggests that if behavior modification is the "rationale" behind the department's policy, this can be better and more humanely accomplished by other means[4]--after the offending individuals, or at least their children, are housed and fed.

There cannot be many more compelling societal interests than for homeless children to have safe and suitable temporary shelter.[5] Because the "remedial need" in this matter is so basic and critical to the well-being of these "individuals", the board must look closely to the statute to find an intent on the part of the legislature to empower the department to cut away this last vestige of their "safety net". The hearing officer simply cannot read the statutes in question as evincing this intent.

In Lubinski v. Fair Haven Zoning Board, 148 Vt 47 (1986), the Vermont Supreme Court recently held:

> Thus it is apparent that all rules of construction rely on a determination of legislative intent or purpose. That intent is most truly derived from a consideration of not only the particular statutory language, but from the entire enactment, its reason, purpose and consequences. Andrews v. Lathrop, 132 Vt. 256, 261, 315 A.2d 860, 863 (1974). Only with such an examination can an interpretation be carried out that avoids unreasonable or unjust results, or that avoids dilution or defeat of legislative objectives. Delaware & Hudson Railway v. Central Vermont Public Service Corp., 134 Vt. 322, 324, 260 A.2d 86, 88 (1976). Even the very words used by the legislature in the enactment must yield to a construction consistent with legislative purpose. In re Preseault, 130 Vt. 343, 348, 292 A.2d 832, 835 (1972). As that case points out, we operate on the presumption that no unjust or unreasonable result was intended by the legislature.

General Assistance is a "bottom line" program. In many, if

not most, cases it is the only source of assistance available to people without any other means of providing themselves with the most basic elements of human existence. Given the remedial purposes of G.A., the issue (if somewhat rhetorically stated) in this matter is whether the legislature would have intended to empower the department to impose such brutal barriers to the eligibility of "innocent" children for general assistance to meet the most basic of their needs in a time of emergency.[6] The hearing officer concludes that this was not the legislature's intent. For all the above reasons, the department's decision regarding the petitioner's eligibility for G.A. should be reversed.[7]

Regarding its administration of the E.A. program, the department has even less of a legal and policy leg to stand on in denying assistance to children based on the misdeeds of their parents. As noted above, although the E.A. program is state-administered, it is federally-conceived and federally-funded (at least in part). See 45 C.F.R. ə 233.120. It is specifically intended to provide emergency assistance only for families with children. See W.A.M. ə 2800. Although the department's E.A. regulations contain provisions identical to their G.A. counterparts (supra) in defining "applicant" (ə 2801) and "catastrophic situations" (əə 2800C and 2802), with one exception (see infra) there is no indication whatsoever in the federal regulations that the eligibility of children must or should be based generally on

the conduct of their parents. Virtually the only provision in the federal regulations restricting eligibility of families for E.A. is one barring assistance to children whose need for "living arrangements" arises because a "relative refused without good cause to accept employment or training for employment." 45 C.F.R. э 233.120(b)(1)(iv). Otherwise, the federal regulations specify that states are free to determine their own eligibility criteria--with the added proviso that "conditions (of eligibility) may be more liberal than those applicable to other parts of this plan (Title IV-A of the Social Security Act)."

As a legal matter, the hearing officer would hesitate to conclude, based solely on the above provisions, that the department's regulations and policy barring assistance to children whose parents are deemed "at fault" in causing their lack of housing are in conflict with the federal regulations. It is clear that the federal E.A. program was intended to provide extremely wide discretion and flexibility to the states. Unlike the state G.A. statutes (see supra) there is no language in the federal regulations regarding "individuals" or "persons" eligible for assistance. Thus, for E.A., it cannot be concluded that the department has exceeded it legislatively-granted authority.

However, based upon the department's own previously-published expressions of intent in adopting certain provisions of the E.A. program, it must be concluded that its regulations regarding "fault" in determining the

existence of a "catastrophic situation" (ə 2802, supra) are hopelessly and irreconcilably in conflict with the purposes of the program. On August 13, 1987 (only two months prior to the release of its "survey" on homelessness, see supra), the department implemented significant amendments to its E.A. regulations. In its Bulletin No. 87-26F, the department proffered the following rationale for amending the E.A. program:

> Policy changes in this bulletin are primarily directed toward provision of increased assistance to alleviate family housing crises and reduce the incidence and duration of homelessness among families with children. The Department presents these changes in response to the increasing incidence of homelessness among low-income families with children.
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> Maximum allowances for housing, which were increased last December, have again been increased and are now approximately equal to the housing payment standards included in an ANFC grant. To further address the problems of homelessness among families with children, a problem which is particularly disruptive to the development of children in need of the stability of a home, significant changes in the Emergency Assistance program have been designed to permit pre-authorization of various items such as rent, moving expenses, furnishings and clothing to aid in getting settled in a new home when natural disaster or catastrophic situations result in their being without shelter.
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> These changes will permit assistance to be extended after the expiration of the 30-day eligibility period, when such expenses can be anticipated and have been pre-authorized within the 30-day period. They also permit greater flexibility in the amount of rent allowed and extended assistance in paying that rent to give the family a better chance to prompt and successful establishment of a new home.

As noted above, the department, at about the same time, indicated in its "survey" of homelessness in Vermont that

"emotional and behavior problems" were one of the primary causes of homelessness as perceived by shelters serving homeless individuals and families.

Given the tenacity with which the department's legal staff defends the denial of assistance to homeless families deemed to be "at fault" (i.e., homeless because of their "behavior"), it is difficult to believe that the department's publicly-expressed concerns for the homeless (especially children) are entirely heartfelt and sincere. As concerns E.A., which is federally funded and gives states wide latitude to define eligibility, the department can make no credible claim whatsoever that its policy is dictated by financial constraints. Again (see supra), the department's motives appear to be primarily, if not solely, an attempt at the "behavior modification" of low-income individuals.

In terms of reasonable and enlightened social policy, this is at best a dubious goal for a "bottom-line" assistance program. However, to the extent that a direct and foreseeable result of this policy is that children, through no fault of their own, will not obtain suitable housing (even during a Vermont winter), the policy is downright cruel.

For these reasons, the hearing officer cannot, and will not, conclude that there is any "rationality" requiring the upholding of this "policy" inherent in the regulations. To the extent that ə 2802 denies E.A. to children solely on the basis of the behavior of their parents, it must be concluded

that it conflicts impermissibly with the department's own publicly-stated purposes of the E.A. program. The department's denial of E.A. to the petitioner in this matter should therefore, be reversed.

FOOTNOTES

[1]The original recommendation was issued on December 12, 1988.

[2]As of the date of the hearing the department had not made a determination regarding the petitioner's eligibility for ANFC. Since this may involve deferent legal standards, this recommendation cannot and should not be read as an indication regarding the petitioner's eligibility for ANFC.

[3]There are indications that the legislature would be highly receptive to a request for increased funding to relieve homelessness. See Report of the Joint Housing Study Committee, January, 1988.

[4]Vendor payments and referrals to other service agencies are two alternatives that come quickly to mind.

[5]The hearing officer understands that as a matter of protocol the department does not take the position that the availability of space in a public shelter for homeless families constitutes appropriate "alternative housing" for purposes of G.A. eligibility. See W.A.M. ə 2613.2. In the "survey" referred to above, one of the commissioner's conclusions was that it was "obvious" that the "solution (for homelessness) is not the building of more shelters." Id, p 61. In past cases, it has been brought to the hearing officer's attention that at least one of the homeless shelters in Burlington requires all its residents to vacate the premises during the daylight hours. At least in winter, this would seem to be an inappropriate housing alternative to families with young children. Also, recent news accounts suggest that physical violence and substance abuse are rampant at some shelters.

[6]The issue in this case is clearly distinguishable from that in Bouvier v. Wilson, 139 Vt. 494 (1981), in which the Vermont Supreme Court upheld the validity of the department's so-called "28-day rule" for temporary housing. In that case, the court found that the department's rule was a direct and "equitable" response to the threatened

depletion of the department's G.A. fund. The Court based its decision on statutory language specifically empowering the department to "reduce equitably" the "amounts of assistance" granted under any program "should the funds available for assistance be insufficient". See 33 V.S.A. э 2554. In that case, there was no real dispute that the department's action was a specific response to a somewhat sudden shortfall of funds.

In the instant matter, the department, using a regulation enacted more than 20 years ago, and without any credible claim of financial necessity, categorically denies assistance altogether to an entire class of desperately needy individuals (homeless children whose parents are deemed to be at "fault" in having been evicted). The hearing officer concludes that this categorical denial of assistance is contrary to the G.A. statutes. If the department cannot grant benefits to this class of individuals without depleting the G.A. fund, then, under Bouvier, it would perhaps be justified in "equitably reducing" the amounts of G.A. it pays to these and/or other recipients. Until then, however, the department's claim of a lack of funding is neither credible nor relevant.

It is also important to distinguish the status of the children of this petitioner from the plaintiffs in Bouvier. In Bouvier, the Court went to considerable lengths to characterize the plaintiffs as individuals who "most probably" would be without housing at the end of 28 days. In the instant matter, the petitioner and her children are indisputably homeless at the time they apply for G.A. One need not "presume" anything about their plight if they are denied assistance.

[7]It is conceivable, though, in the hearing officer's opinion, extremely rare, that a family will consciously and deliberately render themselves "homeless" in an attempt to supplement their income through G.A. In these cases, perhaps, the public interest dictates withholding assistance, even to their children. It should be noted, however, that with the possible exception of one or two cases (see Fair Hearings No. 7726 and 8799--and, in retrospect, the hearing officer is not entirely comfortable with the results he and the board reached in those matters) the hearing officer has not seen a situation that approaches this level of applicant culpability--certainly not the instant matter.

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